United States Court of Appeals

for the Second Circuit

APPENDIX

75-2058

B

Roy Schuster
No. 17722
Drawer B
Stormville, N.Y. 12582

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT OF NEW YORK

Civil Action, File Number _____

THE PEOPLE OF THE UNITED STATES OF AMERICA ex rel. Roy Schuster, Petitioner-Appellant, -against- Leon J. Vincent as warden of the Green Haven Correctional Facility Stormville, New York, Respondent-Appellee.	APPEAL FROM U.S.D.C., S.D. Re: Pro Se 74 Civ. 1705

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NATURE OF INSTANT APPEAL

This is an appeal from the MEMORANDUM AND ORDER #42111 dated March 25, 1975, filed by the Hon. Judge Owen, a Justice of the United States District Court for the Southern District of New York, on petitioner's habeas corpus action in said Court pursuant to 28 U.S.C. §2254, in which petitioner contended that he was entitled to absolute discharge from imprisonment, by the Court.

STATEMENT

This question of said discharge was initially presented

to the State Supreme Court of Dutchess County. There has since been no change in the parties. However, the caption has been successively supplemented: in the Dutchess County Court, Roy Schuster was the petitioner and Leon J. Vincent was the respondent; in the State Appellate Division 2d Dep't, Roy Schuster was the petitioner-respondent and Leon J. Vincent was the respondent-appellant; in the District Court, S.D. of New York, Roy Schuster was the petitioner pro se and Leon J. Vincent was the respondent; and in instant appeal in this Court, Roy Schuster is the petitioner-appellant and Leon J. Vincent is the respondent-appellee.

Petitioner Roy Schuster is the Pro Se relator herein and is currently in the custody of said respondent Leon J. Vincent.

Relator has not applied for any certiorari in this action for absolute discharge by this Court, either prior or subsequent to its commencement in the Dutchess County Supreme Court.

FACTS

Relator, upon conviction of Murder Two and sentence therefor of 25 years to life, was received in Sing Sing

Prison on November 2, 1931, and was thereafter successively transferred to and received in Attica Prison on April 4, 1933, Clinton Prison on January 19, 1935, Dannemora State Hospital on September 9, 1941, and Green Haven Correctional Facility on March 28, 1972.
[Relator was received in New York's Tombs Prison on June 10, 1931 to await trial and remained there until said transfer to Sing Sing.]

Said transfer of relator to said hospital was corruptly motivated. Upon intelligence that relator was moving to retain the services of a lawyer in connection with submission to court of his prepared deposition evidentially demonstrating that officials of Clinton Prison were in effect coercively conditioning inmates therein for future recidivism, the-then warden Martin of said prison instituted against relator an intrapeison lunacy proceeding composed of personnel of said prison and said hospital. By means of said proceeding -- conducted in deliberate violation of all crucial constitutional safeggards appertaining thereto -- said officials accomplished said transfer of relator to said hospital and thereby the effective suppression of said deposition.

Relator, upon reception in said hospital, was held completely incommunicado (in all matters of a legal nature) for the first three years and intermittently thereafter, and,

during his entire detention of 31 years therein, was subjected to cruel and sadistic treatment as a direct result of his unflagging struggles to seek relief in courts of law anent said detention.

Relator, during his detention in said hospital, became eligible for parole in 1948. The Parole Board then denied him parole under circumstances strongly indicating corrupt collusion with the director of said hospital, in that they accepted, from said director, a short one-sentence typewritten opposition to parole of relator [which probably read: "This patient is in need of further care and treatment."]; but, in response to relator's request thereupon to be granted the opportunity to show cause why he should be paroled forthwith, they asked him to "wait outside" --

Relator, in the matter of appeal of said lunacy proceeding, having in vain exhausted his state rights, applied for a habeas corpus hearing in the United States District Court in Auburn, N.Y. The Hon. Edmund Port, judge thereof, dismissed said application in a Memorandum Decision dated January 27, 1966, on ground relator's constitutional right of due process had not been violated in state courts.

The United States Court of Appeals for the Second Cir-

cuit reversed said judgment in a decision dated February 28, 1967 and ordered said district court to grant relator an evidentiary hearing. with counsel assigned, on the question of whether relator's said transfer to said hospital was corruptly motivated.

Said assigned counsel, during said mandated hearing held on July 12, 1967, abandoned said question, without relator's consent or foreknowledge; said Judge Port, in a Decison and Order dated December 8, 1967, ruled that relator had not met his burden of proving said transfer to said hospital corruptly motivated; and said counsel on ground that relator should have been accorded a jury trial on the proceeding that accomplished his transfer to aforesaid hospital.

The United States Court of Appeals for the Second Circuit, upon said appeal, reversed said Judge Port and mandated a full-scale jury-trial proceeding for relator on the question of his sanity and the issues he raises. Schuster v. Herold, 410 F.2d 1071 (1969).

The State, on March 28, 1972, through its agent the director of said hospital, mooted said mandated proceeding eight days before relator was scheduled to appear in court therefor, by rushing him to Green Haven Correctional Facility.

Relator, at said Facility, on being produced before the Parole Board in May, 1972, submitted to said Board a statement in his handwriting saying, in substance, that he felt he was legally entitled to absolute discharge and that his conscience would not allow him to accept supervision of said Board on ground the evidence indicated beyond reasonable doubt (1) that he was not in need of said supervision; (2) that said supervision would served only to obstruct and frustrate honorable rehabilitation; and (3) that, in view of said Board's corrupt denial to him of parole in 1948, said Board was not morally fit to supervise anyone, certainly not him. To this, he added that he would willingly accept the supervision of law which applied equally to each of his fellow citizens. Said Board thereupon denied said absolute discharge [Actually, as will be shown in arguments infra, said Board did not then have jurisdiction of relator.].

Relator's aforementioned assigned counsel appealed the matter to the Supreme Court of Dutchess County in a habeas corpus action; and the Hon. Judge Hawkins, in a decision dated December 15, 1972, ordered said Board to discharge relator expeditiously on unencumbered parole. People ex rel. Schuster v. Vincent, 73 Misc. 2d 653, 342 N.Y.S. 2d 18 (1972).

The State appealed from said decision of Judge Hawkins, and the New York State Supreme Court, Appellate Division,

2d Dep't, reversed unanimously "on the law", in a decision dated June 18, 1973.

People ex rel. Schuster v. Vincent, 42 App. Div. 2d 596 (2d Dep't 1973), 344 N.Y.S. 2d 735.

Relator did not learn of said decision of the Appellate Court until some four months had passed; and, then, upon learning that said assigned counsel had not filed notice of appeal, relator, in a certified letter dated November 23, 1973, released said counsel from further representation of him, after first himself filing notice of appeal and submitting an application to the New York State Court of Appeals for leave to appeal and to proceed in forma pauperis.

The State Court of Appeals [People ex rel. Schuster v. Vincent, 33 N.Y. 2d 1009 (1974), 353 N.Y.S. 2d 969] denied said application on ground it was not timely made, notwithstanding the fact that relator had submitted said notice of appeal and said application as soon as he learned of said decision of the Appellate Court and of his assigned counsel's failure to file notice of appeal therefrom.

Relator thereupon instituted a habeas corpus action under 28 U.S.C. §2254 in the U.S. District Court, S.D. of New York (filed April 17, 1974 as Pro Se Civ. 1705), in which he petitioned said Court for the absolute discharge

to which he believed (and still believes) he was legally and morally entitled in 1953 -- at the latest.

Relator, on November 22, 1974, was produced before the Hon. Judge Owen of said district court and offered a special "release agreement" (in which the Attorney General's Office and a representative of the Parole Board participated), relieving relator of the usual restrictions and obligations of parole, and stipulating that relator could not ever be returned to prison except on conviction of a new crime. Upon relator's rejection of said "release agreement", said judge held his decision in abeyance in order to give relator an opportunity to reconsider the said offer at his leisure.

Relator, in a motion dated January 14, 1975, notified the Court that his rejection of said "release agreement" still stood and requested that the Court decide the matter on the merits of the arguments set forth in his brief. [Relator's reasons for said rejection become apparent in the arguments presented infra.]

The said Hon. Judge Owen, in a Memorandum and Order #42111 dated March 25, 1975, denied relator's petition for absolute discharge and thereupon dismissed his writ.

Relator, on April 2, 1975, filed notice of appeal with

said district court and applied thereto for a Cerificate of Probable Cause, and for permission to proceed on appeal in forma pauperis -- which were granted on April 7, 1975.

QUESTION PRESENTED

The question here presented is whether said Hon. Judge Owen committed error in failing specifically to rule on the following contentions on which petitioner based his claim of legal and moral right to absolute discharge by the Court:

1). That his 1941 Clinton Prison deposition to a court of law was illegally suppressed, in that said suppression violated his Sixth Amendment right of access to court.

2). That the suppression of said deposition was corruptly motivated, in that said suppression was accomplished by an unwarranted and unjustified intraprison lunacy proceeding conducted in Star Chamber manner in deliberate violation of Fourteenth Amendment requirements of fair procedure and due process of law.

3). That the 1948 denial of parole to him was illegally accomplished and corruptly motivated, in that said denial issued from a "hearing" knowingly conducted in brazen viola-

tion of the type of hearing mandated by law, and calculated to continue with impunity the suppression of said deposition.

4). That the 1953 denial to him of absolute discharge from imprisonment (in accord with the pertinent provision of §220 of the Correction Law) was illegally accomplished and corruptly motivated, in that it was a direct consequence of aforesaid denial of parole.

5). That aforesaid denial of absolute discharge was, [like 3) and 4) directly supra], "fruit of the poisonous tree" rooted in the illegal and corrupt suppression of aforesaid deposition.

Relator, in instant appeal, petitions this Court to decide

(a) whether the evidence and arguments submitted under ARGUMENT, hereinbelow, entitles him to affirmative rulings on the five contentions cited under QUESTION PRESENTED, directly supra;

(b) whether, on the merits of his cause, considerations of justice demand that the Court make law on points not at present specifically covered by law -- such as contended in detail infra: that a Parole Board, and even a State, can

lose legal jurisdiction of a citizen of the United States of America; and

(c) whether, by virtue of the poisonous tree doctrine, this Court, as guardians of the Constitution and its complementary federal laws, must, in the interests of justice, grant him absolute discharge and on ground he was legally and morally entitled to said discharge on said ground in 1941 [when the State lost jurisdiction of him], or in 1948 [when the Parole Board lost jurisdiction of him], or in 1953 [in accord with §220 of the Correction Law].

ARGUMENT

THIS COURT SHOULD DISCHARGE RELATOR UNCONDITIONALLY FORTHWITH AND ON GROUND HE WAS LEGALLY AND MORALLY ENTITLED TO SAID DISCHARGE IN 1953 -- AT THE LATEST; for,

POINT ONE

Said Discharge On Said Ground Is Before This Court Without Tenable Opposition; for,

A). The State, in its opposition to relator's petition for a writ of habeas corpus filed April 17, 1974 with the U.S. District Court, S.D., conceded by evasion each and every issue raised therein by relator; for,

It answered said issues with arguments irrelevant thereto -- irrelevant in view of the crucial issue of whether the Parole Board then had jurisdiction of relator; for,

It offered the arguments that relator had refused parole in 1972 and twice thereafter, and that the Parole Board did not have the power to grant relator absolute discharge -- as answers to the following issues raised by relator in said writ in connection with said jurisdiction:

a). That in 1941 officials of Clinton Prison, in violation of law, suppressed relator's deposition to a court of law, evidentially charging said officials with illegal activities conducive to conditioning inmates thereof for future recidivism.

b). That said officials employed an intraprison lunacy proceeding and transfer of relator to Dannemora State Hospital, under color of §383 of the Correction Law, to accomplish said suppression.

c). That said officials conducted said lunacy proceeding in violation of crucial constitutional safeguards.

d). That said lunacy proceeding was tainted to the extent of amounting to a conspiracy to assure relator's virtual "burial" in said hospital, in that a senior doctor of said hospital (Dr. Schwartz) collaborated at said proceeding with the physician of said prison.

e). That the State, during said lunacy proceeding, failed to sustain its burden of proving that aforesaid suppression of aforesaid deposition <u>was not</u> illegally accomplished and corruptly motivated, and that all judgments adverse to relator subsequently derived from proceedings centered therein <u>were not</u> "fruit of the poisonous tree".

f). That, upon reception in said hospital, relator was held incommunicadl in all matters of a legal nature, completely approximately three years and intermittently thereafter.

g). That relator's detention in said hospital was violative of the Eighth Amendment and laws against kidnapping.

h). That, in 1948, during relator's detention in said hospital, in failing to afford relator the type of hearing mandated by law, the Parole Board illegally denied parole to him; and, in hearing hospital opposition to paroling him but thereupon refusing to hear him in rebuttal thereto, said denial of parole was exposed as corruptly motivated.

i). That, in thus colluding with said hospital officials, the Parole Board, by virtue of the laws of conflict of interests, lost jurisdiction of relator to courts of law, and made itself an accessory to all the crimes involved in the transfer of relator to said hospital and the detention of him therein.

j). That had relator not been corruptly denied parole in 1948, he would have been eligible for and deserving

of absolute discharge in 1953 in accord with §220 of the Correction Law.

k). That, in mooting the jury trial mandated for relator in Schuster v. Herold, 410 F.2d 1071 (2d Cir. 1969), by rushing him from Dannemora State Hospital to Green Haven Correctional Facility on March 28, 1972, the State conceded, implicitly, each and every issue listed in a) through j) directly supra.

B). The State's "answer" that aforesaid 1941 lunacy proceeding was neither illegally instituted nor unconstitutionally conducted nor in any way corruptly motivated, in that the transfer of relator accomplished thereby was made in accord with §383 of the Correction Law as it then stood, constituted no less than a flagrant evasion of said issue; for,

The legislature obviously never intended said §383 to be invoked as a sanction for the unconstitutional act of suppressing a deposition to a court of law, by "burying" relator in a madhouse -- in order to prevent a court of law from receiving evidence of recidivism-promoting activities of prison officials.

C). The State, by whatever means, in consistently evading the crucial issues listed in a) through j) under A) supra, established a presumption of law that relator's contentions contained therein were valid beyond attack; for,

1. Evidence not contradicted directly or by legitimate inferences not opposed to probabilities -- is conclusive.

Deregibus v. Saracco, 233 N.Y.S. 99, 225 App. Div. 354 (1929).

2. Uncontradicted and unimpeached testimony cannot be disregarded by court arbitrarily or capriciously, but for judicial purposed such testimony is entitled to belief.

Berger v. Berger, 73 N.Y.S. 2d 384.
Coppo v. Coppo, 297 N.Y.S. 744, 163 Misc. 249 (1937).

3. Uncontroverted testimony must be taken most strongly against the party who is in a position to contradict it, and undisputed evidence, which is positive, direct, and not incredible, must be deemed established.

Heinssenbuttel v. Comnas, 177 N.Y.S. 2d 850, 14 Misc. 2d 509 (1958).

To same effect --

Maloney v. State, 49 N.Y.S 2d 856, aff'd 55 N.Y.S. 2d 846, 269 App. Div. 802 (1944).

Skibicki v. Diessel Const. Co., 290 N.Y.S. 2d 83, Misc. 2d 955, aff'd 290, 29 A.D. 2d 1050 (1967).

Bogorad v. Fitzpatrick, 329 N.Y.S. 2d 874, 38 A.D. 2d 923, aff'd 341 N.Y.S. 2d 314, 31 N.Y. 2d 984, 293 N.E. 2d 561 (1972).

4. The act of suppressing relator's 1941 deposition in deliberate defiance of the law ontains within itself a sufficient basis for an inference of corrupt motivation against the initial suppressors thereof.

Foltis, Inc. v. City of New York, 287 N.Y. 108, 116, 38 N.E. 2d 155, 460.

5. Since the submission or suppression of relator's said 1941 deposition was in the exclusive control of aforesaid Clinton Prison officials, and since suppression thereof would not ordinarily have happened without their guilt, the facts were sufficient to justify an inference of their guilt and to have cast upon them the burden of coming forward with an explanation.

Galbraith v. Busch, 267 N.Y. 230, 234, 196 N.E. 196 N.E. 36,38.

Hogan v. Manhattan Ry. Co., 149 N.Y. 23, 43 N.E. 403.

Griffen v. Manice, 166 N.Y. 188, 183-194, 59 N.E. 925, 926-927, 52 L.R.A. 922.

6. "Failure of a party to produce evidence which conclusively determine the fact in dispute may give rise to a conclusive inference, i.e., to a presumption of law, that the fact is not as he claims it to be or is an claimed by the other side; as where a party fails to produce a charrel or a writing which is in his possession and would, if produced, show the fact indisputably..."

Reehil v. Fraas, 129 App. Div. 563, 564, 114 N.Y.S. 17, 18, rev'd on other grounds, 197 N.Y. 64, 90 N.E. 340.

7. "This Court cannot hold that petitioners were constitutionally free to ignore all the procedures of law ....Respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to unconstitutional freedom."

Justice Potter Stewart, in an Alabama contempt of court case (June 12, 1963).

D). The State had the burden (never sustained) of proving that the aforesaid suppression of relator's deposition to a court of law in 1941 -- by officials of Clinton Prison -- was not corruptly motivated; for,

1. Suppression of said deposition was motivated by

fear of public disclosure of the contents thereof; for,

Said officials acted to suppress said deposition immediately upon learning that relator had moved to retain counsel for submission thereof to the proper court for injunctive relief.

Said officials knew that said deposition would contain strong evidence

a) of inmates of fourth-grade education of said prison being pressured by officials thereof into taking Regents examinations in High School subjects; into keeping said examinations for the time required to engage some other inmate to do the work thereon; and into submitting, as their own, said work to the civilian Head of the prison school for mailing to the Board of Regents;

b) of inmates of said prison being encouraged by officials thereof to devote prison school periods to instructing each other in the most efficacious methods of perpetrating crimes ranging from pickpocketing on through safe-cracking, rape and contract murder; and

c) of inmates of said prison being discriminated against in subtle, and not so subtle, ways, who spent their

sparetime, after-work energy, and five-cents-per-day prison earnings on "outside" correspondence courses calculated to prepare them for reintegration into society as a credit to their community and country --

all of these facts (and many more in the same category) said officials knew; for,

The then-warden Martin of said prison -- shortly prior to said suppression -- had declined to accept relator's offer to show him indisputable visual and documentary proof of said conditioning of inmates for future recidivism.

Said officials realized that said evidence, brought to public attention, would almost certainly result in the discharge of at least several of their clique, including the warden himself -- if not in subjection to criminal prosecutions; for,

Said warden responed to relator's aforesaid offer with the counter-offer (which relator rejected) of any inmate-work-assignment in the prison, if in exchange therefor relator would agree to relinquish intention to submit said deposition, e.i., to connive in said conditioning of inmates for future recidivism.

Said warden deemed it expedient to confiscate said deposition and neglect to include it -- with or without official comments thereon -- in the prison file on relator.

2. Suppression of said deposition was accomplished in deliberate violation of state and federal law; for,

Said officials, in view of their education, training and experience, certainly knew -- and were required to know:

That, in suppressing said deposition, they were perpetrating the illegal act of tampering with physical evidence and denying relator access to a court of law.

N.Y.S. Penal Law, §215.40.

U.S. Const., 14th Amend.

White v. Ragen, 325 U.S. 760 (1945).

That, in accomplishing suppression of said deposition through transfer of relator to Dannemora State Hospital, the intraprison lunacy proceeding, employed as instrument therefor, was illegally instituted under authority of §383 of the Correction Law; for,

Had the legislature intended that

said §383 be invoked as a guillotine for the suppression of depositions to courts of law, it would have written into said law (which it did not) at least some hint consituting sanction of such an application thereof.

Even if said 383 had contained such a sanction, said sanction would have rendered said 383 unconstitutional; for,

Misuse of power possessed by virtue of state law made possible only because the wrongdoer is clothed with the authority of state law is action taken under color of state law.

United States v. Classics, 313 U.S. 209.
Screws v. United States, 325 U.S. 91.

3. Suppression of said deposition logically implied that said officials did not institute said lunacy proceeding upon belief relator was mentally ill; for,

Said officials, in instituting said lunacy proceeding to accomplish suppression of said deposition, acted illegally without probable cause; for,

They had no reasonable evidence of relator being afflicted with mental illness; for,

They had seen fit to confiscate said deposition but not to place it in evidence or even in the prison file on relator, though their allegement of relator being so afflicted was founded on the contents thereof.

Had said officials in fact believed relator afflicted with "fantastic delusions" (as they alleged), they would not have deemed it necessary (as they did) to perpetrate the illegal act of suppressing said deposition; for,

They would have also in that case believed that the contents of said deposition constituted unanswerable proof of said "delusions".

Had said officials in fact believed relator afflicted with "fantastic delusions" (as they alleged), they would not have deemed it necessary (as they did) to conduct aforesaid lunacy proceeding in violation of all crucial constitutional safeguards, including denial of prior notice, of apprisal of nature of said proceeding, of right to submit documentary and testimonial evidence, and of right to retain counsel therefor.

Had said officials, on the contrary, believed that relator was then a perfectly sane person, and that he

The following page (#24) is missing.

d) that said agents were more concerned with sustaining sinecures and creating openings for personal promotions -- by stimulating the need for more prisons, through the simple device of promoting recidivism -- than with the regeneration of prisoners under their authority.

E). The decision of Hon. Judge Owen of the U.S. District Court for the Southern District of New York, dated March 25, 1975 (which dismissed relator's writ in said Court) did not in the least lessen the validity of relator's right to said discharge on said ground; for,

Said decision was founded on arguments lacking probative value; for,

1. Said Judge, on page 4 of said decision, stated: "There is no support in New York law for the position that the Parole Board loses jurisdiction over a prisoner because of alleged corrupt acts of prison officials." Here the argument of said Judge was based on a misconstruction of relator's "position"; for,

Relator's position, in this connection, was that, in colluding with the director of Dannemora State Hospital to continue the suppression of his 1941 Clinton

Prison deposition, by means of denying him parole in 1948 on the basis of a "hearing" knowingly conducted in violation of law appertaining thereto, the Parole Board then-and-there became incompetent to exercise jurisdiction over him and hence lost said jurisdiction to courts of law.

2. Had said Judge argued from relator's said position, correctly stated, he no doubt would have readily recognized that, in view of said collusion of the Parole Board and the consequent additional felonies attached thereto, his citations of §212, N.Y.S. Corr. Law and the Matter of Hines v. State Board of Parole, 293 N.Y. 254, 257, 56 N.E. 2d 572, 573, were inapplicable to relator's case.

3. Said Judge argued (by implication) that relator's allegements (of illegal and corruptly motivated acts) were mere unsustained allegations, thus ignoring relator's reasonably supported arguments plus the obvious fact that, on ground of suppression of said deposition, the burden of controverting said allegements rested on the State.

4. To argue, as said Judge did (also by implication), that, in denying parole to relator in 1948, the Parole Board did not violate any laws, is to argue that it was not illegal for said Board

a) to flout the laws regulating the conduct of hearings mandated for prisoners;

b) to collude to end of compounding the illegal act of suppressing a deposition to a court of law; and

c) to aid and abet prison and hospital officials in knowingly "burying" a sane person in a notoriously sadistic madhouse.

5. Said Judge, on pages 4 and 5 of said decision, stated (anent said issue of jurisdiction): "Petitioner cites no persuasive authority in support of his legal claims. The Court is not aware of any." Here the Court missed the point; for,

The question properly before the Court (in view of its belief of there being no existent law in the matter) was therefore whether, under the conditions of relator's case, the Court was obligated, in the interests of justice, to make law to fill the crucial need of protecting relator's rights under the 5th, 8th and 14th Amendments and also under §§241 and 242 of Title 18 U.S.C. -- a question which must be answered affirmatively; for,

When politically entrenched state

officials (such as members of a Parole Board) are entrusted with vested jurisdiction over a citizen of this country, and act in violation of said Amendments and laws to the serious detriment of said citizen, the courts must divest said officials of said jurisdiction and thereupon exercise it in behalf of the injured party -- or be content to sit in Temples of HollownMockeries.

THE STATE, THEREFORE, IN CONSEQUENCE OF ITS DEFAULTS BY EVASION CITED UNDER THIS POINT, AND OF ITS FAILURE TO SUSTAIN ITS BURDENS OF PROOFS, DOES NOT NOW HAVE ANY TENABLE OPPOSITION TO SAID DISCHARGE ON SAID GROUND.

POINT TWO

Said Discharge On Said Ground Lies Within The Power Of This Court; for,

A). The Parole Board became incompetent to exercise jurisdiction over relator in 1948 and hence thereupon lost it to courts of law; for,

1. The Parole Board derived its decision to deny parole to relator in 1948 (during the illegal and corrupt detention of him in Dannemora State Hospital) in an arbitrary, suspicious and illegal manner indicative of corrupt motivation; for,

Said Board heard the director of said hospital in opposition to said parole but thereupon denied relator's request for opportunity then-and-there to show cause why he should be paroled forthwith.

Said Board restricted said hearing of relator to three questions: What is your name? What is your institutional number? How are you feeling? and his necessarily succinct answers thereto.

Said Board, in thereupon denying said parole, in effect transferred its powers of parole anent relator to said director and his staff; for,

It would not thereafter (in accord with its then-current policy) hear relator again until said director and his staff returned relator to prison.

Parole of relator thereafter -- if ever -- was subject to the will (however arbitrary, capricious and self-serving) of said director and his staff. [Relator, in fact, was not returned to prison until 31 years later, and then only because of the intervention of the Second Circuit.]

2. The Parole Board, in the process of denying said parole, exposed itself to the strong presumption that it knew -- but did not want the record to show -- that said denial of parole was being illegally, wrongfully and corruptly accomplished; for,

It could not have tenably contended it did not know that the transfer of relator to said hospital, and the detention of him therein, were to obstruct and thwart submission of the deposition relator had moved in Clinton Prison to present to a court of law; for,

Had it not in fact been previously apprised that the Department of Correction was interested in preventing the true nature of said transfer and detention from coming to light of public attention, it would not have deemed it necessary and expedient (as it did) to hear the director of said hospital in opposition to said parole but thereupon refuse to hear relator in rebuttal thereto.

It could not have tenably contended it did not know (in face of its refusal to hear relator in the matter) that the lunacy proceeding which accomplished said transfer and detention -- constituted an instance of constitutionally prohibited misuse of vested powers under color of state law [United States v. Classics, 313 U.S. 209. Screws v. United States, 325 U.S. 91.]; for,

The institution of said proceeding -- to the illegal end of accomplishing the suppression of relator's aforesaid deposition [Penal Law, §215.40. 18 U.S.C., §§241, 242. White v. Ragen, 324 U.S. 760 (1945).] was illegal; for,

Had the legislature intended that said 383 be employed as an instrument for suppression of deposition to courts of law, it would have written into

said law (which it did not) at least some hint of such an application thereof.

Assuming arguendo that said 383 sanctioned its invocation to accomplish suppression of depositions to courts of law, said sanction in itself would have sufficed to render said 383 unconstitutional; for,

The interests of no one may be impaired constitutionally by a decision resulting from a proceeding instituted in violation of law.

Pennoyer v. Neff, 95 U.S. 114 (1878).
Simon v. Southern R., 236 U.S. 115, 122 (1915).
Grannis v. Ordean, 324 U.S. 385, 392, 394 (1914).

It could not have tenably contended it did not know:

That it was required by law to hear relator on factors calculated to determine his fitness for parole.

Pizza v. Lyons, 101 N.Y.S. 2d 884 (1950), rev'd on other grounds, 278 App. Div. 65, 103 N.Y.S. 2d 882.
Menechino v. Oswald, 430 F. (2d Cir. 1970).

That it was required by law to base predictions of

future harm on evidence of past conduct pointing to probable consequences.

Minnesota ex rel. Pearson v. Probate Court, 309 U.S. 270, 274 (1940).

Sled Hill Cate v. Hostetter, 22 N.Y. 2d 607, 613, 241 N.E. 2d 714, 194 N.Y.S. 497 (1963).

That in restricting its 1948 hearing of relator at said haspital to the three questions cited supra -- instead of according him a hearing calculated to determine fitness for parole -- it deprived him of ~~him of~~ the due process of law guaranteed to him by the Fourteenth Amendment.

That, in 1948, in according inmates of state prisons periodic hearings (until paroled) calculated to determine fitness for parole -- instead of one (no parole) hearing consisting of the three questions cited supra -- it deprived relator in 1948 of the equal protection of the law guaranteed to him by the Fourteenth Amendment.

That the transfer of relator to said hospital, and the detention of him therein, amounted to kidnapping; for,

Wilful and intentional detention of a person for an unlawful purpose against his will and without authority

of law constitutes the crime of kidnapping.

People v. Florio, 301, N.Y. 46, 92 N.E. 2d 881, 17 A.L.R. 2d 993 (1950).

That, during said 1948 hearing, in refusing to allow relator to show cause why he should be paroled forthwith, it ententionally colluded with the director of said hospital to prolong indefinitely the kidnapped detention of him therein -- which, actually, lasted for 31 years -- and thereby to continue suppression of aforesaid deposition.

N.Y.S. Penal Law, §205.65.

That it had the legal authority to parole relator from Dannemora State Hospital.

Op. Att. Gen., 117.

That a situation drastically altered by deprivation of due process of law constitutes "ex post facto" punishment.

Cf. U.S. v. Platt, D.C. Tex. 31 F. Supp. 788, 793.
Andrus v. McCanley, D.C. Wash. 21 F. Supp. 70.

It could not have tenably contended judicial exemption from constitutional requirements of due process of law and fair procedure; for,

"Our constitutional scheme does not contemplate that society may commit lawbreakers to the capricious and arbitrary action of prison officials."

Sostre v. McGinnis, 442 F. 2d 178 (2d Cir. 1971), cert. den., 404 U.S. 1049 (1972), 405 U.S. 978 (1972), at 198.

"We must not play fast and loose with basic constitutional rights in interest of administrative efficiency."

U.S. v. Fay, 247 F. 2d 662 (2d Cir. 1957), cert. den., 335 U.S. 915.

Government bodies are required to exercise their powers in the interest of society, untainted by self-serving considerations.

Steele v. Louisville & Nashville R. Co., 324 U.S. 192 (1944).

"A fundamental principle of law is that every government agency -- including the Parole Board -- must respect the rights of every citizen."

Berigan v. Sigler, No. - 1049 (D.C. Jan., 1973).

3. The Parole Board, and-or its agents, in consequence of having (since 1948) consistently evaded answers to relator's arguments pointing up the corruptness of afore-

said denial of parole in 1948, implicitly conceded legally that said denial was in fact illegally accomplished and corruptly motivated; for,

Uncontroverted testimony must be taken most strongly against the party who is in a position to contradict it, and undisputed evidence, which is positive, direct, and not incredible, must be deemed established.

Deregibus v. Saracco, 233 N.Y.S. 99, 225 App. Div. 354 (1929).
Berger v. Berger, 73 N.Y.S. 2d 384.
Coppo v. Coppo, 297, 163 Misc. 249 (1937).
Heinssenbuttel v. Comnas, 177 N.Y.S. 2d 850, 14 Misc. 2d 509 (1958).
Maloney v. State, 49 N.Y.S. 2d 856, aff'd 55 N.Y.S. 2d 846, 269 App. Div. 802 (1944).
Bogorad v. Fitzpatrick, 329 N.Y.S. 2d 874, 38 A.D. 923, aff'd 341 N.Y.S. 2d 314, 31 N.Y. 2d 984, 293 N.E. 2d 561 (1972).

To argue that denial of parole to relator in 1948 was not illegally accomplished and corruptly motivated would be tantamount, under condition of said denial, to assumption that the Parole Board was not legally required to respect the rights and privileges constitutionally and lawfully guaranteed to every citizen of this country, and that said Board had the legal and constitutional power to knowingly indulge in criminal acts and in aiding and abetting others

in the compounding of felonies.

4. The Parole Board, an agency of the State, may not legally indulge in conduct calculated to injure a prisoner feloniously and be regarded as legally competent to exercise jurisdiction over him and hence to retain that jurisdiction; for,

"If an authorized agency in which a child is placed under section three hundred and fifty five (c) so fundamentally alters its progress that the child can no longer benefit from it, the child shall be returned to the court which entered the order or placement."

The Family Court Act Of The State Of New York, §367 (1962).

[Relator's inferences from said §367:

Authority of an authorized agency over a child mistreated thereby is neither in principle nor in effect more legally subject to devolvement on a court of law, than is parole board authority criminally misused against a prisoner-ward of the State -- in both cases, the relief of said devolvement is mandated by the spirit and principles implicit in the 8th and 14th Amendments of the U.S. Constitution.

The intent of the legislature and courts of this State

(when in accord with the spirit of constitutionally approved law), moreover, being to operate within the ambit of constitutional due process and equal protection of the laws, has always been such that said 367 might be paraphrased to read:

If the Parole Board knowingly misuses its authority over a prisoner-ward of this State to the extent of illegally and corruptly denying him parole upon legal date of eligibility therefor, said Board becomes legally incompetent to exercise said authority and hence said authority shall devolve on an appropriate court of law for proper relief (which, in view of the instant status of relator's case, this Court is the appropriate one, and the proper relief is absolute discharge on aforesaid ground).]

5. The Parole Board, in consequence of said illegal and corrupt denial of parole, satisfied the requirements (of the laws of conflict of interests) for loss of jurisdiction of relator; for,

Said Board had thereby become a party with conflicting and illegal interests in the "burial" of relator in said hospital; for,

It had thus acquired the interest of preventing said illegal and corrupt denial of parole from

ever coming to light; for,

Said illegal and corrupt denial of parole (as it must have known) had made it liable to criminal prosecution therefor, and, hence, also as an accessory after the facts of all the crimes directly and indirectly involved in the illegal and corrupt detention of relator in said hospital.

B). All judgments adverse to relator, derived from actions stemming from the illegal and corruptly motivated suppression of aforesaid deposition, must be regarded as null, void, and vacated; for,

In consequence of the State's failure to sustain its burden of proving that suppression of relator's aforesaid deposition at Clinton Prison in 1941 was not illegally accomplished and corruptly motivated, the subsequent transfer of him to Dannemora State Hospital, the detention of him therein from 1941 to 1972, and the denial of parole to him in 1948 -- all having been "fruit of the poisonous tree" -- must be judged likewise as having been illegally accomplished and corruptly motivated; for,

Lack of due process anent said deposition rendered

all judgments adverse to relator obtained from subsequent actions against him, derived from said lack, likewise illegally secured and corruptly motivated;

Reynolds v. Orvis, 7 Cow 269.
Ex parte Lange, 18 Wall 163.
Virginia v. Rives, 100 U.S. 313.
Ex parte Siebold, 100 U.S. 371.
People ex rel. Tweed v. Liscomb, 60 N.Y. 559.
S.C. 11 Alb. L.J. 346.

To argue, in face of the facts and law appertaining thereto, that said subsequent actions cited supra were not illegally accomplished and corruptly motivated would be tantamount to assumption that, with full approval of the law, a person may escape the statutory consequences of committing crime by the simple expedient of compounding the initial crime with as many additional ones as said escape may appear to necessitate.

SUBMITTING EVIDENCE OF A CRIME TO A COURT OF LAW, THROUGH THE LEGALLY PRESCRIBED PROCEDURE OF A DEPOSITION, IS CONSTITUTIONALLY PROTECTED BEHAVIOR WHICH MAY NOT, WITH IMPUNITY, BE OBSTRUCTED, PREVENTED, OR, IN ANY WAY, PUNISHED.

U.S. Const., 6th Amend.
18 U.S.C. §§241, 242.

C). Law pertinent to said discharge on said ground:

1. "If the Board of Parole is satisfied that an absolute discharge from parole is in the best interests of society, the Board may grant such a discharge prior to the expiration of the full maximum term to any other person who has been on unrevoked parole under the provisions of Article Eight and Article Nine of this chapter for at least five consecutive years....A discharge granted under this section shall constitute a termination of the sentence on which the person discharged was released on parole."

N.Y.S. Corr. Law, Art 8, §220.

[Had relator not been corruptly denied parole in 1948, he would have been eligible for and deserving of absolute discharge in 1953, in accord with said 220 of the Corr. Law.]

2. Discharge from Prison in civil cases. "Where, although the original imprisonment was lawful, yet by some act, omission or event, which has taken place afterwards, the prisoner has become entitled to be discharged."

Civil Practice Act, §1262 (2) (1962).

3. Final discharge of prisoner. "If it appears that the prisoner is unlawfully imprisoned or restrained in his liberty, the court or judge must make a final order dis-

charging him forthwith."

Civil Practice Act, §1262 (1962).

4. "Courts have always asserted and exercised authority which though perhaps not expressly established by statute, is based upon the inherent right and duty of the Courts to protect the citizen in his constitutional prerogatives and to prevent oppressions of persecutions."

People v. Gerewitz, 294 N.Y. 163.

People ex rel. Said v. Martin, 289 N.Y. 471.

To same effect --

People ex rel. Sabatino v. Jennings, 221 App. Div. 418, 223 N.Y.S. 124 (1927), 246 N.Y. 258, 158 N.E. 613 (1927).

5. Absolute discharge from imprisonment has been held to be constitutional.

People v. Sing Sing, 39 Misc. 113 (1902).

6. Vindication of due process is precisely the historic office of the Habeas Corput Writ.

Fay v. Noia, 372 U.S. 391.

NO TENABLE OBSTACLE TO SAID DISCHARGE ON SAID GROUND BY THIS COURT REMAINS THAT CAN POSSIBLY OUTWEIGH PUBLIC INTEREST DEMANDS FOR THE JUSTICE CONSTITUTIONALLY LONG PAST DUE TO RELATOR.

POINT THREE

Said Discharge On Said Ground Would Constitute An Affirmation Of The Sound Principles Of Justice Under Law; for,

A). Said ischarge on said ground would be compatible with the best interests of society; for,

!. Relator's pre-prison conduct was far above moral and legal norms of good citizenship; for,

Relator -- as theatrical records will show -- worked steadily as an entertainer for many years, finally rising to stardom, first, in the Keith Theaters, and, then, in the Paramount Theaters.

Relator, as a theatrical performer -- like almost all such performers -- donated his professional services on hundreds of occasions to the end of raising funds for worthy charitable organizations, at least half of which were for the benefit of hard-pressed widows of policemen who had died in the line of duty.

Relator, when he left the theatrical profession in 1929 and became head instructor at the Wayburn Institute

of the Stage of New York City, taught hundreds of teenagers to qualify for theatrical careers, and in the course of said instruction, encouraged them likewise to donate their professional services to worthy charities.

Relator, when only about 24 years of age, assumed (with the Equitable Insurance Company) the burden of maintaining a policy which, in event of his death, guaranteed his wife the continued security of $25,000, if his death was natural, and $50,000, if his death was accidental -- a lot of money in 1929.

Relator, in 1930, on having apprehended his wife for the sixth time in acts of adultery, merely ordered her, within 24 hours, to find other lodgings for herself -- instead of killing her then-and-there, as many otherwise good citizens have done under similar circumstances.

Relator's one departure from approved conduct -- the final killing of his wife in 1931 -- resulted from his then-inexperienced mind having been driven to despair by the civil court's repeated denial of his motions for a hearing on the matter of alimony awarded to his wife upon a hearing of her and her lawyer in the Judge's private chambers, without ever hearing relator with or without his lawyer in or out of his chambers.

Relator's killing of his wife was the type of aberration that happens but once in a lifetime (if ever) with a person of relator's character.

2. Relator's conduct, during his incarceration since 1931, has been consistently dedicated (when possible) to preparation for reintegration into society as a credit to his community and country; for,

Relator, during said incarceration, consistently adherred to a code of ethics approved by decent society -- a fact which is not contested by state records of him.

Relator, during said incarceration, devoted his sparetime energy and limited income (however small) to end of preparing himself for an honorable rehabilitation, upon his return to society -- a fact which is corroborated by prison records, Board of Regents records, and those kept by the International Schools of Correspondence.

Relator, during said incarceration, among other achievements calculated to further said rehabilitation, has written the words and music of 44 songs and enough humorous prose and verse for at least six books -- a fact which he will be glad to substantiate with production of same upon request of the Court.

B). The inescapable inferences logically derived from the pertinent evidence lawfully demand said discharge on said ground; for,

Since it was consonant with constitutionally prescribed procedure for relator to move in 1941 at Clinton Prison to submit to a court of law a deposition evidentially proving what amounted to prison-official-sponsored coercive conditioning of inmates of said prison for future recidivism,

1) the officials of said prison, in suppressing said deposition, illegally deprived relator of access to court guaranteed to him by the Sixth Amendment; and, since said deposition was clearly suppressed to conceal felonious misconduct of said officials, the suppression of said deposition was corruptly motivated;

2) the intrapeison lunacy proceeding -- employed as an instrument to accomplish the transfer of relator to Dannemora State Hospital and thereby suppression of said deposition -- was clearly not sanctioned for that purpose by any law, including §383 of the Correction Law, and said lunacy proceeding was therefore illegally invoked and corruptly motivated;

3) said lunacy proceeding was conducted in Star Chamber manner in violation of constitutional safeguards appertaining

thereto, in addition to being employed to end of suppressing said deposition, and was therefore illegally conducted and corruptly motivated;

4) the transfer of relator to said hospital, on basis of said lunacy proceeding, was therefore illegally accomplished and corruptly motivated;

5) the detention of relator in said hospital, in collusion with officials of said prison, to end of suppressing said deposition, was illegally accomplished and corruptly motivated;

6) the denial of parole to relator in 1948 at said hospital, in collusion with officials of said prison and the director of said hospital -- by means of denying relator a meaningful hearing -- was illegally accomplished and corruptly motivated;

7) the Parole Board, on the basis of said denial of parole, became incompetent to exercise its powers of jurisdiction over relator and hence then-and-there lost said jurisdiction to courts of law -- and the courts therefore should have discharged him absolutely in 1948;

8) had relator not been illegally and corruptly denied said parole, he would have been eligible for and deserving of

absolute discharge in 1953 in accord with §220 of the Correction Law; and

9) the Parole Board (or agent thereof) is not now in a tenable position to dispute relator's contention of legal right to have been discharged absolutely at the latest in 1953.

C). Denial of said discharge on said ground would, in face of the facts, fail to give due regard to the unwarranted consequences to relator inherent therein; for,

It would fail properly to consider that, in the absence of said discharge on said ground, unwarranted presumptions would prevail

1) that the suppression of relator's 1941 Clinton Prison deposition was not illegally accomplished and corruptly motivated;

2) that the transfer of relator to Dannemora State Hospital was not illegally accomplished and corruptly motivated;

3) that relator's detention in said hospital for 31

years was not illegally accomplished and corruptly motivated;

4) that denial of parole to relator in 1948 was not illegally accomplished and corruptly motivated;

5) that denial of absolute discharge (in accord with §220 of the Correction Law) was not illegally accomplished and corruptly motivated;

6) that, for the rest of his life, relator would be stigmatized with the brand of a formerly insane person sufficiently recovered therefrom to be returned to society (despite the State's failure to prove any tenable case of mental illness against him, either prior or subsequent to the transfer of him to said hospital);

7) that, in accepting less than said discharge on said ground, relator would in effect become an accessory after the fact in the criminal acts perpetrated against him -- which resulted in the cruel and unusual punishment of him with 27 years of servitude beyond merited date of parole and of 22 years beyond date of merited absolute discharge therefrom; and

8) that implicit in failure so to discharge relator would center the conscious or unconscious reasoning: Relator, in accord with his conscience, having moved in 1941 to depose

to a court of law crimes conducive to raising the rate of recidivism was thereupon (to end of suppressing his said deposition)

a) rightfully Star Chambered into a madhouse;

b) rightfully prevented from taking a timely appeal therefrom;

c) rightfully denied parole in 1948 and absolute discarge in 1953; and

d) rightfully restricted, by judicial decree in 1975, to the alternatives of aiding and abetting in the concealment of the illegal and corrupt acts involved in suppression of aforesaid deposition and fruits thereof, or of languishing in servitude for the rest of his life, in consequence of having moved depositionally in 1941 to bring violations of law to the attention of a court of law --

it being rightfully considered irrelevant, incompetent and immaterial that had he not thus attempted to obey the laws against withholding evidence of crime (and continuing crime) from a court of law, he would normally have been paroled in 1948 and in 1953 discharged absolutely therefrom in accord with the pertinent provisions of §220 of the Correction Law.

FELONJES PERPETRATED BY A PAROLE BOARD AGAINST A PRISONER UNDER ITS JURISDICTION CAN NEVER SERVE TO JUSTIFY CONTINUED EXERCISE OF VESTED AUTHORITY OVER SAID PRISONER UNDER COLOR OF STATE LAW.

CONCLUSION

The illegal and corrupt suppression of relator's 1941 Clinton Prison deposition violated

1) his rights under the Sixth Amendment to access to courts of law;

2) his right under the Fifth and the Fourteenth Amendments to fair procedure and due process of law;

3) his right under the Eighth Amendment, and under §241 of Title 18 U.S.C., to avail himself "of any right or privilege secured to him by the Constitution or the laws of the United States", without being subjected by a State to such injuries, oppressions, deprivations, and cruel and unusual punishments

a) as being illegally and corruptly transferred in 1941 to a madhouse, and retained therein for 31 years;

b) as being illegally and corruptly held in said madhouse completely incommunicado in all legal matters for the first three years and intermittently thereafter -- thereby depriving him of rights to timely appeal of the suppression of said deposition and fruits thereof;

c) as being illegally and corruptly denied parole in 1948 without even a semblance of the type of hearing mandated by law; and

d) as being illegally and corruptly deprived of the absolute discharge which, in accord with §220 of the Correction Law, would normally have issued in 1953 but for said 1948 denial of parole.

The illegal and corrupt suppression of aforesaid 1941 deposition became a "poisonous tree", and the "fruit" thereof the subsequent state actions calculated to continue said suppression and to avoid the legal consequences centered in such labors.

If this "poisonous tree" and "fruit" thereof do not legally render the State of New York, and its agents the Parole Board, incompetent to exercise jurisdiction over relator as a citizen of these United States of America,

then it necessarily follows that said State, and said Board, may, with absolute impunity, commit, again and again, the most vicious of crimes against a citizen of this country.

Allowing the consequent of this hypothesis to stand would be tantamount to turning the solemn pronouncements of

the Constitution, and its complementary laws, into hollow mockeries, and, thereby, to placing a seal of approval on state governments dedicated in effect to inflicting vengeance upon any citizen of this country, under their jurisdiction, who dared to move, even through legally prescribed procedures, to bring criminal acts of their officials to the attention of courts of law, notwithstanding the fact that, in doing so, said citizen would merely have performed his duty to public interest.

To prevent the consequent of said hypothesis from becoming an established reality, this Court, as a federal guardian of the Constitution, should rule -- and thereby serve notice on state governments -- that neither a State, nor any body or agent thereof may commit major felonies against any citizen of this country, without thereby losing legal jurisdiction of that citizen.

In no other conceivable way could such a citizen be assured of reasonable protection from illegal attacks upon him (or her) by state officials morally unfit to exercise powers of jurisdiction over anyone.

The facts in relator's case constitute a cogent demonstration of the need of such action by the Court.

CAN A STATE FELONIOUSLY PUNISH A PRISONER-CITIZEN OF THIS COUNTRY FOR HAVING EXERCISED CONSTITUTIONALLY GUARANTEED RIGHTS AND STILL RETAIN SENTENCE-JURISDICTION OF HIM, WITHOUT MAKING A MOCKERY OF JUSTICE UNDER LAW?

RELIEF SOUGHT

The relief relator seeks is absolute discharge from servitude and on the basis of the facts centered in his case, in conjunction with the existing and the urgently needed law appertaining thereto; and, in this connection, relator prays that, in the exercise of its powers, the Court will move to correct the state records of him by ruling:

1). That the suppressing of relator's aforesaid 1941 Clinton Prison deposition was illegally accomplished and corruptly motivated.

2). That the lunacy proceeding against relator at said prison was illegally instituted, unconstitutionally conducted, and corruptly motivated.

3). That, [on strength of 2) supra], the transfer of relator from said prison in 1941 to Dannemora State Hospital was illegally accomplished and corruptly motivated.

4). That the detention of relator in said hospital (from September 9, 1941 to March 28, 1972) was illegal and corruptly motivated.

5). That denial of parole to relator in 1948 was illegally accomplished and corruptly motivated.

6). That, by virtue of 5) supra, denial of absolute discharge to relator in 1953 was illegally accomplished and corruptly motivated.

7). That, in consequence of 5) and 6) supra, the Parole Board became incompetent to exercise jurisdiction over relator and therefore lost it to courts of law.

Relator further prays that the Court will see fit to grant these rulings [1) through 7)], and that the Court will thereupon consider whether said rulings are sufficient to move the Court to exercise its power to discharge relator absolutely and forthwith, on either -- or all -- of the following grounds:

a). That, by virtue of the discharge provision of §220 of the Correction Law [see the phrase "and any other persons", in ¶2], relator was entitled to said discharge in 1953.

b). That relator was entitled to said discharge in 1948 at which time the Parole Board lost jurisdiction of him to courts of law.

c). That relator was entitled to said discharge in 1941 at which time the State itself lost jurisdiction of him to federal courts of law by virtue of the facts

that relator was then, as currently, a citizen of the United States of America;

that a state's jurisdiction of such a citizen is necessarily secondary and conditional; and

that, by virtue of the laws of conflict of interests, et al, said jurisdiction became inactive and devolved on federal courts, when the State abused it by perpetrating a series of felonies against relator -- as the State did when the Attorney General (its legal representative) employed (through his deputies) the powers of his office to conceal and compound the felonies involved in the illegally accomplished and corruptly motivated suppression of relator's aforementioned 1941 Clinton Prison deposition to a court of law.

Relator respectfully takes the liberty to emphasize that, in this action, his primary objective is to obtain

the rulings prayed for supra, which, he believes, are warranted by the evidence, and which are imperative to an honest state record of his incarceration, and to public interest. His second objective is to obtain absolute discharge on the strength of said rulings, if the Court grants them and considers said discharge thereon warranted.

HAD RELATOR NOT MOVED DEPOSITIONALLY TO REDUCE THE RATE OF RECIDIVISM -- HAD HE INSTEAD CONNIVED IN OFFICIAL ACTIVITIES CALCULATED TO CONDITION PRISONERS FOR FUTURE CAREERS IN CRIME -- HAD HE, IN SHORT, EMULATED THE PHILOSOPHY OF UNPRINCIPLED MORAL DERELICTS -- HE WOULD NOT NOW BE PETITIONING THIS COURT FOR THE JUSTICE DEMANDED BY PUBLIC INTEREST.

WHEN A STATE REGARDS HONORABLE CONDUCT AS JUST CAUSE FOR SADISTIC PUNITIVE ACTION, SURELY IT IS TIME FOR A FEDERAL COURT TO INTERVENE WITHOUT RESERVATION IN BEHALF OF THE PERSON INJURED THEREBY -- IN TERMS OF MAKING WHATEVER NON-EXISTING LAW PROPER JUSTICE TO THE INJURED PERSON MAY DEMAND.

Roy Schuster

Roy Schuster 17722
Green Haven Corr. Facility
Stormville, N.Y. 12582

State of New York)
: ss:
County of Dutchess)

Subscribed and sworn to before me
this 6th day of May, , 1975.

Esmond W. Gifford

Notary Public
ESMOND W. GIFFORD, SR.
Notary Public, State of New York
Dutchess County
Commission Expires March 30, 1977

APPENDIX OF DECISIONS

A: State Supreme Court, Dutchess County

B: State Appellate Division, Second Department

C: United States District Court for the Southern District of New York

APPENDIX A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

---X

THE PEOPLE OF THE STATE OF NEW YORK ex rel.
ROY SCHUSTER

Relator,

-against-

LEON J. VINCENT, SUPERINTENDENT, GREEN HAVEN CORRECTIONAL FACILITY, STORMVILLE, NEW YORK: Or Other Officer Having Custody of the Relator,

Respondent.

---X

HAWKINS, J.

This writ of habeas corpus, a petition of relator's counsel, alleges that the relator has been denied due process for after having been continuously incarcerated for some forty-one (41) years, he is entitled to unconditional release.

Convicted of the crime of Murder in the Second Degree in 1931, the relator was then sentenced to a term of twenty-five years to life. The sad and pathetic history of petitioner's crime and his confinement to prison and to hospital was treated at length by Judge Irving R. Kaufman, writing for the majority opinion for the Second Circuit Court of Appeals in Schuster v. Herold, 410 F. 2d 1071 (April 24, 1969), cert. den. - U.S. -, 24 L.Ed. 2d 96 (1969). By that writ, petitioner challenged the legality of his transfer from Clinton Prison to Dannemora State Hospital.

Since March of 1972, the relator has been an inmate of Green Haven Correctional Facility. I presided at the hearing

on the instant writ on July 28, 1972, at Green Haven Prison. The delay in ruling upon the writ was occasio ned, initially, by requests for the minutes of the said hearing by petitioner's counsel and, thereafter, by a series of requests for additional time within which to submit and exchange memoranda of law.

On May 16, 1972, Roy Schuster had appeared before the Parole Board in which he stated, inter alia:

> "My conscience would not permit me to accept any sort of parole board supervision."

The reasons he gave were that he was not in need of supervision by the Parole Board; that the Parole Board had "cooperated with the corruptly motivated retention of me 24 years beyond the date of merit *** and, lastly, that "the parole board is not morally fit to supervise anyone, certainly not me."

From my perusal of the minutes of the said hearing, it is evident that the Parole Board sought to persuade the petitioner to accept the concept of supervision and endeavored, at some length, to explain to Mr. Schuster that the Commissioners could not deviate from accepted rules and practices respecting supervision during parole.

Upon the hearing before me, despite efforts on behalf of petitioner's counsel to limit the proceedings to the essential issues, the petitioner, understandably, was virtually

irrepressible and obviously under compulsion to discourse upon his grievances, real or fancied.

From my examination of the hospital records, the minutes of Parole Board hearing and my observations upon the hearing, it is quite apparent that the petitioner suffers from many physical ailments: he is now 68 years of age, has an assortment of physical medical problems and is quite frail. He is also -- and not without cause -- under considerable mental and emotional stress.

Reverting to the minutes of the Parole Board hearing -- and in this respect I do so reluctantly -- one gets the impression that after petitioner read his statement, the Board initiated a Socratic dialogue. Conversant with the prisoner's history, they were predicatably confident that he would re-enter the maze from which he would be unable to extricate himself. Occasionally, petitioner used legal terminology and the Board by according them their real legal significance virtually shunted Schuster into refusing any supervision. The Board was then able to pronounce as a matter of law, that it had no alternative but to deny parole and to hold him until his next hearing before the Parole Board which was scheduled for one year later.

I see no virtue served in embarking upon a lengthy dissertation construing Article 8 of the Correction Law. The facts

at bar present a most extraordinary situation and one calling for a measure of reasoned and reasonable accommodation to the end of permitting the petitioner to live his few remaining years outside the prison's walls. Surely it requires neither tremendous legal erudition nor administrative ingenuity to fashion a type of parole conditioned upon a nominal or "constructive supervision." (I note that within the last several days, the United States District Court for the Southern District of New York, in one instance, imposed sentence upon a defendant of eighteen months, suspended execution of the sentence, and then placed the defendant on "probation" for "one day."

I do not construe the instant writ as a predicate for the petitioner's vindication or for any possible future legal action. Equally, in view of the petitioner's history, the Parole Board might have considered the real purposes and efficacy of such supervision and reporting by relator and the relationship of such procedure to the protection of society or the rehabilitation of the prisoner.

At bar, to insist upon the petitioner reporting at stated intervals and remaining under the nominal supervision of his parole officer would be to require Mr. Schuster to make his obeisances to a Parole Board officer and thereby submit to a symbolic set which apparently offends his conscience.

APPENDIX A

Accordingly, I direct that the Parole Board expeditiously conduct another hearing and to arrange for the presence of petitioner's counsel thereat; further, that the Parole Board give due weight to the existing unusual and extraordinary facts which, in my opinion, appear to compel unencumbered parole.

To aid in expediting the matter, the within opinion is deemed the order of the court.

So ordered.

(s) Joseph F. Hawkins
J.S.C.

Dated: December 15, 1972

Appearances:

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APPENDIX B

APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT
Decision from LAW JOURNAL, dated June 20, 1973

People ex rel. Roy Schuster v. Vincent, ap -- In a habeas corpus proceeding, the appeal is from a judgment of the Supreme Court, Dutchess County, dated Dec. 15, 1972, which inter alia directed the New York State Parole Board to expeitiously conduct a new hearing.

Judgment reversed, on the law, without costs, and writ dismissed.

The record discloses that at the parole hearing on May 16, 1972, the Parole Board was willing to parole relator and the Attorney General implicitly consented thereto; and that Schuster has been a fit person for parole. But relator, in his intransigence (based on his "conscience," to quote him), insisted that only unconditional release was acceptable to him and that the Parole Board was not fit to pass on whether he should be paroled. This position of the relator, in our opinion, prevented the Parole Board from granting him such parole as might lawfully have been allowed him at the parole hearing (Correction Law, §§210, 212, subdiv. 8; People v. Randazzo, 37 Misc. 2d 82, aff'd 20 A.D. 2d 850, aff'd N.Y. 526, cert. een. sub nom. Randazzo v. New York, 381 U.S. 953; 7NYCRR 1.12). As long as the Parole Board violates no positive statutory requirement, its discretion is absolute and beyond review in the courts (Matter of Hines v. State Board of Parole, 293 N.Y.

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254, 257).

People ex rel. Roy Schuster, res, v. Vincent, ap -- Motion by relator for an order "correcting the record" on appeal (804 E) from a judgment of Supreme Court, Dutchess County, dated Dec. 15, 1972.
Motion denied.

Dated June 18, 1973

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES ex rel. ROY SCUSTER, Petitioner, -against- LEON J. VINCENT, as Warden of the Green Haven Correctional Facility Defendant.	74 Civ. 1705 MEMORANDUM AND ORDER #42111

OWEN, District Judge

This is a petition for a writ of habeas corpus pursuant to 28 U.S.C. §2554, brought by a state prisoner now incarcerated in Greenhaven Correctional Facility. It is undisputed that petitioner has exhausted his state remedies. For reasons appearing below, I must dismiss his petition.

Much of the sad history surrounding this case is set out in detail in United States ex rel. Schuster v. Herold, 410 F.2d 1071, 1073-77 (2d Cir.), cert. denied, 396 U.S. 487 (1969). That case also began with a petition for habeas corpus, in the United States District Court for the Northern District of New York, in which petitioner alleged

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that although sane, he had by unconstitutional procedures been adjudged insane and transferred to Dannemora State Hospital for the Criminally Insane, becuse he had made certain accusations of official corruption in Clinton State Prison. After the District Court dismissed the petition, the Court of Appeals for the Second Circuit ordered the case remanded for assignment of counsel and evidentiary hearing on the issue of whether the transfer had in fact been corruptly motivated. After this mandated hearing, which also explored the questions of petitioner's sanity and the transfer procedures, the District Court again dismissed the petition. The Court of Appeals reversed, and again remanded the case, with instructions to grant a sanity hearing substantially similar to that accorded non-criminals who involuntarily are civilly committed. On March 28, 1972, the State mooted this proceeding by transferring petitioner from Dannemora where he had been held for thirty-one years to Greenhaven Prison.

In May, 1972, the petitioner having by then spent forty-one years of his life in prison, appeared before the Parole Board for the first of several periodic confrontations with them. He demanded an absolute discharge

and refused any but unconditional parole, despite the Parole Board Chairman's explanation that this was beyond the Board's powers, as is undisputed by the fact, The Board thereupon set the case aside until May, 1973. On May, 16, 1973, after petitioner summarily stated "I refuse parole. I have refused parole," and left the room, the Board again reserved the case, until May, 1974.

After his first meeting with the Board in 1972, petitioner submitted a petition for habeas corpus to the New York State Supreme Court, Dutchess County, After a hearing, that Court on December 15, 1972, ordered the Board to expeditiously conduct another parole hearing giving due weight to the existing unusual and extraordinary facts which appeared to compel unencumbered parole. People ex rel. Schuster v. Vincent, 73 Misc. 2d 653, 342 N.Y.S. 2d 18 (1972). However, on June 18, 1973, the Appellate Division unanimously reversed on the law. People ex rel. Schuster v. Vincent, 42 App. Div. 2d 596 (2d Dep't 1973), 344 N.Y.S. 2d 735, and the New York Court of Appeals denied petitioner's motion for leave to appeal as untimely. People ex rel. Schuster v. Vincent, 33 N.Y. 2d 1009 (1974), 353 N.Y. 2d 969. Petitioner asks this Court to reverse the New York Courts on the law, and order him unconditionally discharged.

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As a basis for this relief, petitioner contends that

(1) had he not been improperly committed, he would have been paroled in 1948 and unconditionally discharged in 1953, and

(2) because his commitment by prison officials was allegedly corruptly motivated, the Parole Board lost all jurisdiction over him in 1948, including the power to place conditions upon his release.

There is no support in New York law for the position that the Parole Board loses jurisdiction over a prisoner because of alleged corrupt acts of prison officials. Indeed, because petitioner is serving an indeterminate sentence with a maximum limit of life imprisonment, his sole method of obtaining release from prison is through the action of the Parole Board. See former §212, N.Y. Correction Law, (McKinney's 1968). As the Appellate Division stated, "[a]s long as the Parole Board violates no positive statutory requirement, its discretion is absolute and beyond review in the Courts. Matter of Hines v. State Board of Parole 293 N.Y. 254, 257, 56 N.E.2d 572, 573." People ex rel. Schuster v. Vincent, supra, at 736. All of the foregoing is true regardless of whether petitioner would have been paroled in 1948 absent the insanity commitment. Petitioner cites no persuasive authority in support of his legal claims. The Court is not

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aware of any.

I was moved, as was the Second Circuit, and held a hearing on November 22, 1974 at which the petitioner and a representative of the Parole Board were present. At the urging of the Court, the representative of the Parole Board went so far as to consent to a Special "release agreement" which would relieve petitioner from most of the ordinary conditions of parole. The obligation to make periodic reports were waived, the parole board was not to interfere with petitioner's life, and petitioner was not to be returned to prison unless he should commit another crime. Petitioner rejected this, continuing to demand nothing less than unconditional discharge. I reserved judgment on this petition, asking petitioner to use the time to think about the "release agreement." Petitioner has now made a "motion to decide," renewing his demands for unconditional release. He holds the keys to his cell, but will not use them. There being no basis upon which this Court can act, I must dismiss his petition for habeas corpus.

It is so ordered.

The intervention of the Governor of New York may be appropriate here, and an application to him is suggested.

(s) by Judge Owen
United States District Judge

March 25, 1975